IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12206 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHETAN @ SONI JATISHBHAI CHAVDA - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MR SATISH R PATEL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR ND GOHIL AGP for Respondent(s) : 2,
RULE NOT RECD BACK for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 18/08/2006

ORAL JUDGMENT

1. By filing the present petition, the petitioner-detenu has challenged his detention order dated 09/03/06 by which he is detained as a 'dangerous person' under the provisions of Gujarat

Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

2. In the grounds of detention, there is a reference to 2 criminal cases pending against the detenu. So far as the first offence is concerned, it is filed under Section 379 of the IPC and the second offence is filed under Section 392 of IPC read with Section 135 of the Bombay Police Act. It is alleged that the detenu has committed theft of various articles. The detaining authority has found that the activities of the detenu are such that it will prejudicially affect public order, and, therefore has detained the petitioner as a 'dangerous person'.

3. Learned advocate for the petitioner submitted that so far as pending criminal cases are concerned, all these cases are under the provisions of the Indian Penal Code and they are individual cases. He further submitted that simply because the cases are registered against the petitioner, it cannot be said that the petitioner has violated public order and some

more material is required to justify the stand taken by the detaining authority that the activity of the petitioner is prejudicial to public order. Learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court in **A.J.Solanki V. Police Commissioner, Surat** reported in 2000 (1) GLH 393. In paragraph 22 of the said judgement, Division Bench of this Court has held as under :

> “So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could

have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

4. Learned Assistant Government Pleader is not in a position to point out any documents as to on what basis and material the detaining authority has come to the aforesaid conclusion.

5. Having gone through the records, there is nothing to show that the activities of the petitioner is likely to prejudicially affect public order. There is no credible material from which it can be said that the activities of the petitioner is prejudicial to public order. The cases are under the provisions of the Indian Penal Code and they are individual cases. At the most it can be said that the activities of the petitioner is in breach of law and order, and not public order. The petition is required to be allowed as from the available records it cannot be said that the activities of the petitioner

is against public order.

6. In the result, the petition is allowed. The order of detention passed against the detenu dated 9-3-2006 is quashed and set aside. The detenu Chetan @ Soni Jatishbhai Chavda is ordered to be released forthwith unless his presence is required in connection with any other case.

7. Learned advocate for the detenu makes a voluntary statement that even if the detenu will not enter the limits of Vadodara Police Commissionerate area up to 31-10-2006 except for attending the criminal cases pending against him. This voluntary statement is recorded. It is for the learned Assistant Government Pleader to inform the concern authorities about the voluntary statement and it is for the concerned authorities to monitor the same.

8. Rule made absolute accordingly. No order as to costs.

[P. B. MAJMUDAR, J.]

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